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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re R.L., et al., Persons Coming  
Under the Juvenile Court Law.

B293038

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. 18LJJP00417)

Plaintiff and Respondent,

v.

S.S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles  
County, Steven E. Ipson, Judge. Affirmed.

Anne Fragasso, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Assistant County Counsel, and Stephanie Jo Reagan, Principal  
Deputy County Counsel, for Plaintiff and Respondent.

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S.S. (Mother) appeals from the juvenile court's jurisdiction and disposition orders made after the court adjudged her children, R.L and Y.L., dependents under Welfare and Institutions Code section 300.<sup>1</sup> Mother contends that the evidence did not support the jurisdictional findings or the removal order. We disagree. As we shall explain, substantial evidence supported the court's findings that a substantial risk of harm existed to the children because of Mother's abuse of substances and the children's exposure to domestic violence and that the children would not be protected without removal from Mother's custody. Accordingly, we affirm.

### **FACTUAL AND PROCEDURAL HISTORY**

The family consists of Mother, minors R.L. (born in 2009) and Y.L. (born in 2016) and the children's father, J.L.<sup>2</sup> Although they were living in the same home and attempting to co-parent the children, the parents were no longer together as a couple when the current dependency proceedings began.

#### ***A. Prior Dependency Proceedings and Contacts with the Family***

Since the late 1990's, the juvenile dependency court and the Department of Children and Family Services (DCFS) have been involved with Mother based on eight referrals about Mother's physical abuse and alcohol abuse. In 2006, the juvenile court sustained a dependency petition as to Mother's two older children, who are now adults, alleging that Mother physically abused them and that Mother's abuse of alcohol rendered her unable to provide care to the children and placed them in fear of physical abuse. Mother eventually reunified with the children after she completed

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

<sup>2</sup> The child's father is not a party to this appeal.

six months of substance abuse treatment, individual counseling, and participated in 12-step meetings.

In July 2014, DCFS investigated a domestic violence referral involving the family. An anonymous caller informed DCFS that Mother came home drunk at about 2:00 a.m. and that she and the children's father then engaged in a physical altercation in front of the child R.L. The neighbors summoned the police to stop the fight. The caller reported Mother had redness around her neck area and some bruising on her arms and that the father had broken items in the house. Although DCFS resolved the matter as unfounded, Mother admitted to DCFS that the incident was not the first time she and the father had fought and that the police had been dispatched to the family home to address Mother's drinking on several occasions.

The record also discloses Mother's criminal history of arrests for driving with a suspended license and/or without a license, injury upon a child in 2007, and corporal injury on a spouse in 2003, convictions in 2011 for driving while under the influence, and in 2015 for disorderly conduct involving alcohol.

### **B. *Current Dependency Proceedings***

On May 7, 2018, DCFS received a referral for R.L and Y.L. According to the referral, on May 6, 2018, law enforcement responded to a disturbance at the family's home after receiving a report of a woman screaming. The police report indicated that when police arrived, Mother was trembling and crying, bleeding from her nose and lip and had redness on her chest and neck. She reported that the children's father had physically attacked her after a night of drinking alcohol and arguing. Mother described that during the argument the children's father lunged at her, pulled her hair, pinned her to the floor, and punched her in the face with his fist three times. She tried to call 911, but he grabbed her by the

neck with both hands and strangled her. Eventually, she escaped and ran to the home of a neighbor to call the police.

When the DCFS social worker interviewed Mother, she admitted that she and the children's father had been drinking that evening and that they had argued, but she denied that father had physically abused her. She claimed she asked him to leave during the argument, and that she accidentally slipped and fell when the backyard gate swung toward her as the father was leaving the property. She also told the social worker that she pulled the phone out of the wall because she was frustrated. Mother acknowledged she was an alcoholic and that she drank approximately four beers on the night of the incident. She also acknowledged that she used marijuana to relax after work.

When the social worker interviewed the children's father, he conceded he argued with Mother but also denied the claims of domestic violence. The social worker also interviewed the child R.L., who stated that he was asleep at the time of the incident between his parents and did not witness the fight. He also denied observing domestic violence between his parents, but wished his parents would argue less.

On July 5, 2018, DCFS filed a dependency petition under section 300 on behalf of the children alleging that the parents engaged in domestic violence, that Mother failed to protect the children from their father's violence, and that both Mother and the children's father abused substances which endangered and placed them at substantial risk. At the initial hearing on the petition, the juvenile court ordered the children detained from their father. Mother's attorney informed the court that Mother was willing to drug test and she would participate in services to allow the release of the children to her care. Over DCFS's objection, the juvenile court ordered the children released to Mother on specified conditions, including that Mother not permit the children's father to

reside in the home, that Mother submit to weekly drug and alcohol testing with levels “at zero,” and that DCFS conduct unannounced home visits.

According to the jurisdiction/disposition report, after the detention hearing, when Mother submitted to four random drug tests, she tested positive for cannabinoids twice and failed to show up for the other drug tests. In Mother’s subsequent interview with the DCFS social worker, Mother continued to deny that she and the children’s father had a history of domestic violence<sup>3</sup> and characterized the incident in May 2018 as a minor dispute. And even though she had previously agreed to do so, Mother had not yet obtained a restraining order to protect herself and the children from their father.

Mother reported that she had been abusing alcohol since she was 15 years old and used to “drink gallons” but now rarely drank, except maybe one glass of brandy twice a month. She also stated that she started smoking marijuana when she was a teenager. She refused to participate in any services. When the children’s father was re-interviewed, he again denied that he and Mother had a history of domestic violence.

DCFS expressed concern that Mother had an unresolved substance abuse problem and that both parents denied domestic violence. DCFS also expressed concern for the children’s safety, noting that Y.L. was a toddler at the time. DCFS recommended that the court sustain the petition and remove the children from the parents.

At August 27, 2018, adjudication hearing, Mother testified that she had four or five beers the night of the May 2018 incident.

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<sup>3</sup> When questioned about the 2014 report of domestic violence between her and the children’s father, Mother claimed that the altercation involved the neighbor, not the children’s father.

She maintained that although she and the father argued that evening, her injury was an accident. She told the court that children were asleep in the house, and the argument took place outside. Mother explained she called the police from a neighbor's home because when she grabbed her landline to call the police, she inadvertently yanked the cord from the wall. She also denied that the children's father struck her during the incident, and she stated that any statement in the police report to the contrary was false.

Mother also denied that any domestic violence between her and Father occurred in 2014. Regarding her prior child welfare case in 2006 involving her older children, Mother testified she completed her case plan, which included an outpatient substance abuse program. She claimed that she knew how to use alcohol without abusing it. Mother stated that she still drank a couple of beers once or twice a month, and she did not feel impaired when she drank. She denied that she was impaired by alcohol during the May 2018 altercation. Mother also testified that she did not believe her use of substances impaired her ability to care for the children who were usually asleep when she drank or used marijuana.

The juvenile court sustained the petition and found the children described by section 300, subdivisions (b)(1) and (j).<sup>4</sup> The

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<sup>4</sup> As sustained, the petition states:

"[(b)(1): Mother and Father] engaged in [a] violent altercation in the presence of the children. On 05/06/18, the father pulled the mother, pinned mother to the ground, and repeatedly struck the mother's face with the father's fist. The father prevented the mother from calling law enforcement by pulling the phone from the mother's hands. The father grabbed the mother's neck and strangled the mother, causing the mother to have difficulty breathing. The father attempted to prevent the mother from leaving the location by grabbing the mother's arm and attempting to push the mother back into the home. The mother and father

court then proceeded to the disposition, finding: “I was hearing testimony that I did not believe was true. I cannot rely on the mother. The court will issue removal orders.” The juvenile court declared the children dependent children of the court, made findings under section 361, subdivision (c), and removed the children from parental custody. The juvenile court reiterated: “The court does not believe that the mother can be protective given the testimony that I heard today, which was a minimization and a recantation. . . . The mother is also persistent in drinking.”

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pushed each other, resulting in the mother falling to the ground. The mother suffered bleeding to the mother’s nose and mouth, a laceration and swelling on the mother’s lip, and redness on the mother’s neck and chest. The mother failed to protect the children in that the mother allowed the father to reside in the children’s home and have unlimited access to the children. The violent conduct by the father against the mother, and the mother’s failure to protect the children, endangers the children’s physical health and safety, creates a detrimental home environment, and places the children at risk of serious physical harm, damage, danger, and failure to protect.

“[(b)(2) and (j)(1): Mother] has a history of substance abuse, including alcohol, and is a current abuser of alcohol and marijuana, which renders the mother incapable of providing regular care and supervision of the children. The child [Y.L.] is of such a young age requiring constant care and supervision and the mother’s substance abuse interferes with providing regular care and supervision of the child. The mother has a criminal history of convictions of DUI Alcohol Drugs, DUI Alcohol 0.08 Percent, and Disorderly Conduct: Intox Drug/Alcohol. The children’s siblings . . . were prior dependents of the [j]uvenile [c]ourt due to the mother’s substance abuse. The mother’s substance abuse endangers the children’s physical health and safety, and places the children at risk of serious physical harm and damage.” The court also sustained a separate substance abuse allegation under section 300, subdivision (b)(1) against the children’s father.

Mother timely filed an appeal.

## DISCUSSION

### A. *Sufficient Evidence Supports the Dependency Court's Exercise of Jurisdiction*

When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.)

Here, Mother does not assert that the court erred in exercising jurisdiction over the children based on the section 300 allegations against the children's father. Thus, the children will remain dependents of the court, and the juvenile court will be able to adjudicate parental rights regardless of the outcome of this appeal. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491–1492.)

Mother, however, contends that substantial evidence did not support the jurisdictional findings that her abuse of substances and the allegation of domestic violence between the parents placed the children at risk of harm. Even if this court exercises its discretion to consider the merits of Mother's claim because the jurisdictional finding might prejudice her in future custody or family law proceedings,<sup>5</sup> we conclude that sufficient evidence supported the jurisdictional findings as to Mother.

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<sup>5</sup> See *In re Drake M.*, *supra*, 211 Cal.App.4th at pp. 762–763 [observing that appellate courts may review jurisdictional findings,



A juvenile court may determine a child is subject to the court's jurisdiction if it finds by a preponderance of the evidence that "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . . [or a parent's inability] to provide regular care for the child due to the parent's . . . substance abuse." (§ 300, subd. (b)(1).) " 'A jurisdictional finding under section 300, subdivision (b)[(1)] requires: " (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) "serious physical harm or illness" to the child, or a "substantial risk" of such harm or illness.' " ' " The third element " " "effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future . . . ." [Citation.]' [Citation.] Jurisdiction may be exercised 'based on . . . a current or future risk.' " (*In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1452.)

When asked to assess whether sufficient evidence exists to support the juvenile court's findings, our task begins and ends with a determination as to whether there is any substantial evidence, to support the juvenile court's conclusion. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) We do not reweigh, judge the value of or resolve conflicts in evidence; nor do we exercise independent judgment or evaluate the credibility of witnesses. (*In re B.D.* (2007) 156 Cal.App.4th 975, 986.) Jurisdictional findings are reviewed in a light most favorable to the challenged order; all conflicts and reasonable inferences are resolved in favor of the order. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450–451.)

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even though jurisdiction is proper under other jurisdiction allegations when the challenge finding could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings].

Further, we affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.) The appellant has the burden to show that substantial evidence does not support the finding or the order. (*In re Liam L.* (2015) 240 Cal.App.4th 1068, 1087.)

Mother contends substantial evidence does not support the court's exercise of jurisdiction because there is no evidence that her abuse of substances or the incident of domestic violence between the parents placed the children at substantial risk of current harm within the meaning of the statute. Specifically, concerning her use of alcohol and marijuana, Mother points out that although she had a history of alcohol use, she had previously completed a treatment program, was employed, and did not use in front of the children. She argues that her use of substances was recreational and thus did not justify the exercise of dependency jurisdiction. We are not persuaded.

Substantial evidence in the record demonstrates that Mother has an ongoing substance abuse problem which posed a risk to her children. Mother, who is now over 40 years old, has abused substances since she was 15 years of age, and her prior involvement with the dependency and criminal justice systems demonstrates that her consumption of alcohol is more than mere recreational use. In the late 2000's, sustained dependency allegations for her older children disclosed that Mother abused alcohol and that her alcohol use caused her to abuse the children. And even though Mother participated in treatment and services to regain custody of those children, her problems with alcohol persisted as demonstrated by her 2011 conviction for a DUI and her conviction in 2015 for disorderly conduct for an incident which involved her consumption of alcohol.

Also, Mother's alcohol abuse was a factor in both the July 2014 and the May 2018 domestic violence incidents. The record

discloses that in 2014, her drinking led to a domestic violence incident with the children's father, which the minor R.L. witnessed. At the time, Mother told police that it was not the first time she and Father had gotten into a fight. Moreover, Mother consistently minimized her alcohol and drug use and downplayed the role alcohol played in those events which caused authorities to intervene in her family in 2018. As her positive drug tests demonstrate, Mother continued to use substances during these proceedings when the children were in the home, and she refused to participate in services or treatment. Mother's behavior during these proceedings demonstrated that she lacked insight into her ongoing substance abuse problem.

Based on the evidence before it, the juvenile court reasonably could find that Mother had an unresolved substance abuse problem that placed the children at risk of harm. Indeed, courts have sustained similar allegations based on a totality of evidence demonstrating a parent's habitual drug abuse, including the parent's current use, prior consistent use of substances, and failure to participate in treatment and drug testing. (See, e.g., *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1218–1219 [concluding that the mother's use of cocaine during her pregnancy, her history of drug use, and her failure to consistently drug test and enroll in a substance abuse program justified the court's findings under section 300, subdivision (b)(1) of drug abuse].)

We accordingly affirm the juvenile court's jurisdictional findings.

**B. *No Basis Exists to Reverse the Juvenile Court's Disposition Orders Removing the Child from Mother's Custody***

As relevant here, section 361, subdivision (c)(1), provides that "[a] dependent child shall not be taken from the physical custody of his or her parents . . . unless the juvenile court finds

clear and convincing evidence” that “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s . . . physical custody.” (§ 361, subd. (c)(1).) “The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent’s past conduct as well as present circumstances.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) “In making its disposition orders the court has broad discretion to resolve issues regarding the custody and control of the child.” (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 346.)

The same evidence that supports the juvenile court’s jurisdictional findings also supports the juvenile court’s decision to remove the children from Mother’s custody. (*In re R. V.* (2012) 208 Cal.App.4th 837, 849 [“The jurisdictional findings are prima facie evidence the child cannot safely remain in the home.”].)

Mother assails the removal order as improper because the court had previously released the children to her care at the detention hearing. Mother argues that nothing had occurred in the interim between the detention and the adjudication that justified the court’s decision at the disposition to remove the children from her custody. Not so. At the detention hearing, Mother asked that the children be released to her and agreed to participate in services. The court specifically conditioned the release of the children to Mother at detention on Mother submitting to weekly drug and alcohol tests with levels “at zero.” After that, Mother missed drug tests, tested positive for cannabis several times, refused to participate in services, and failed to follow through to obtain

a restraining order to protect herself and the children from their father. Given Mother's failure to abide by the conditions for the children's release, and her other promises to participate in the case plan and take other protective measures to ensure the safety of her children, we conclude that the Mother did not demonstrate the court abused its discretion when it ordered the children's removal from her parental custody.

**DISPOSITION**

The orders are affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.